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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ASUSTEK COMPUTER, INC.

Plaintiff,

v.

SHANGHAI EASTERN FUDART TRANSPORT
SERVICES CO., LTD., CHINA EASTERN AIRLINES
CO., LTD., CHINA CARGO AIRLINES, AIR CHINA,
DART EXPRESS (TAIWAN) LTD., ULTRA AIR
CARGO, INC., TRUXTON LOGISTICS CORP. and LOS
ANGELES EL PASO EXPRESS LEE, INC.,

Defendants.

ECF Case

**08 CV 02770
(Judge McMahon)**

**LOS ANGELES EL PASO EXPRESS INC.'S ANSWER AND AFFIRMATIVE
DEFENSES TO AIR CHINA LTD.'S CROSS-CLAIMS**

Defendant, Los Angeles El Paso Express Lee, Inc. ("Lee") by its attorneys, Barry N. Gutterman & Associates, P.C., for its Answer and Affirmative Defenses to Defendant Air China Ltd.'s ("Air China") Cross-Claims, alleges upon information and belief:

19. Lee denies the allegations contained in paragraph 19 of the Cross-Claims.
20. Lee denies the allegations contained in paragraph 20 of the Cross-Claims.
21. Lee denies the allegations contained in paragraph 21 of the Cross-Claims.
22. Lee denies the allegations contained in paragraph 22 of the Cross-Claims.

23. Lee denies knowledge or information sufficient to admit or deny the allegations contained in paragraph 23 of the Cross-Claims and therefore denies same and leaves Air China to its proof.

**AS AND FOR A FIRST
AFFIRMATIVE DEFENSE**

24. In the event that said shipment moved subject to any statutory or contractual limitations of liability, either specifically agreed to or contained in any applicable law, tariffs, circulars, and/or governing publications, the plaintiff and/or Air China may not recover in excess of such limitations.

**AS AND FOR A SECOND
AFFIRMATIVE DEFENSE**

25. To the extent that the plaintiff and/or Air China failed to meet the minimum filing requirements of filing a proper written claim within the time prescribed, this lawsuit is time barred.

**AS AND FOR A THIRD
AFFIRMATIVE DEFENSE**

26. The complaint and cross-claims fail to state a claim against Lee upon which relief may be granted.

**AS AND FOR A FOURTH
AFFIRMATIVE DEFENSE**

27. The bill of lading, tariffs and classifications, and the governing publications do not contemplate responsibility for special damages. To the extent that plaintiff and/or Air China seeks recovery for special damages, Lee is not responsible for such amounts.

**AS AND FOR A FIFTH
AFFIRMATIVE DEFENSE**

28. Lee is not responsible or liable for any negligence which was a proximate cause of any alleged incident or damages of which plaintiff and Air China allege.

**AS AND FOR A SIXTH
AFFIRMATIVE DEFENSE**

30. Plaintiff's state law claims are preempted by federal law, which govern this matter.

**AS AND FOR A SEVENTH
AFFIRMATIVE DEFENSE**

31. Plaintiff failed to mitigate its damages, if any, and, therefore, plaintiff and Air China are barred from recovering any such damages from Lee.

**AS AND FOR AN EIGHTH
AFFIRMATIVE DEFENSE**

32. Plaintiff's complaint and Air China's cross-claims should be dismissed, as the United States District Court for the Southern District of New York is an improper venue and/or the action should be transferred pursuant to 28 U.S.C. §1404.

**AS AND FOR A NINTH
AFFIRMATIVE DEFENSE**

33. Plaintiff's complaint and Air China's cross-claims should be dismissed pursuant to the doctrine of forum non conveniens.

WHEREFORE, Defendant Los Angeles El Paso Express Lee, Inc. demands judgment be entered herein: (1) dismissing Air China Ltd.'s cross-claims against it with prejudice, together with interest, costs, disbursements and attorney fees incurred herein; and (2) for such other further and/or different relief as this court may deem just and proper.

Dated: New York, New York
June 23, 2008

By: /s/ Barry N. Gutterman
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